

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 7

MAY 9, 1973

No. 19

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Tariff Commission Notices

DEPARTMENT OF THE TREASURY
Bureau of Customs

NOTICE

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Bureau of Customs

(T.D. 73-113)

Tuna fish—Tariff-rate quota

The tariff-rate quota for the calendar year 1973 on tuna classifiable under item 112.30, Tariff Schedules of the United States

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 19, 1973.

It has now been determined that 109,809,104 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1973 at the rate of 6 per centum ad valorem under item 112.30, Tariff Schedules of the United States. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 per centum ad valorem under item 112.34 of the tariff schedules.

Pursuant to the provisions of item 112.30, Tariff Schedules of the United States, the above quota is based on the United States pack of canned tuna during the calendar year 1972.

(343.3)

G. R. DICKERSON,
Assistant Commissioner,
Office of Operations.

[Published in the Federal Register April 25, 1973 (38 F.R. 10164)]

(T.D. 73-114)

Bonded Carriers

Approval and discontinuance of carrier bonds, Custom Form 3587

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 24, 1973.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D"

indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
The Adley Corp., 92nd at State Line, Kansas City, Mo., motor carrier; Seaboard Surety Co. (PB 3/22/68) D 3/22/73 ¹	Mar. 22, 1973	Mar. 22, 1973	Baltimore, Md.; \$50,000
B & M Towing Co., P.O.B. 12506, Houston, Tex., water carrier; U.S. Fidelity & Guaranty Co. D 3/30/73	Mar. 10, 1971	Mar. 10, 1971	Houston, Tex.; \$50,000
Blue Arrow-Douglas, Inc., 525 Burton St., SW., Grand Rapids, Mich., motor carrier; Federal Ins. Co.	Feb. 23, 1973	Apr. 2, 1973	Detroit, Mich.; \$50,000
Blue Line Express, Inc., 200 Daniel Webster Hwy., S. Nashua, N.H., motor carrier; Insurance Co. of North America (PB 4/10/70) D 4/2/73 ²	Mar. 15, 1973	Apr. 2, 1973	Boston, Mass.; \$50,000
F. J. Boutil Driveaway, Inc., 705 S. Dort Hwy., Flint, Mich., motor carrier; American Ins. Co. (PB 3/4/68) D 4/3/73 ³	Mar. 4, 1973	Apr. 4, 1973	Baltimore, Md.; \$25,000
Chicago & Eastern Illinois Railroad Co., 72 W. Adams St., Chicago, Ill., rail carrier; Safeco Ins. Co. of America (PB 4/3/68) D 4/3/73 ⁴	Apr. 3, 1973	Mar. 27, 1973	Chicago, Ill.; \$50,000
Victor Chimienti, Inc., W. 1023 Ide Ave., Spokane, Wash., motor carrier; Pacific Ins. Co.	Feb. 1, 1971	Mar. 30, 1973	Seattle, Wash.; \$25,000
Dom's Transportation Inc., Railroad Ave. Extension, Albany, N.Y., motor carrier; St. Paul Fire & Marine Ins. Co. (PB 11/15/48) D 3/13/73 ⁵	Mar. 13, 1973	Mar. 13, 1973	New York Seaport; \$25,000
Fairbanks Trucking, Inc., Santa Rosa & Oregon Dr., Modesto, Calif., motor carrier; Argonaut Ins. Co. D 7/16/72	July 14, 1971	July 21, 1971	San Francisco, Calif.; \$25,000
Max L. Fairchild dba Max Fairchild Trucking, P.O.B. 65, Hamilton, Mont., motor carrier; Safeco Ins. Co. of America (PB 3/30/72) D 3/23/73 ⁶	Feb. 23, 1973	Mar. 23, 1973	Great Falls, Mont.; \$25,000
Federal Transfer Co., Inc., 270 S. Hanford St., Seattle, Wash., motor carrier; U.S. Fidelity & Guaranty Co. (PB 11/17/72) D 3/19/73 ⁷	Nov. 17, 1972	Mar. 19, 1973	Seattle, Wash.; \$25,000
Insured Transporters, Inc., 1944 Williams St., San Leandro, Calif., motor carrier; St. Paul Fire & Marine Ins. Co. D 7/26/72	July 13, 1971	July 13, 1971	San Francisco, Calif.; \$60,000
J & M Transportation Co., Inc., P.O.B. 488, Milledgeville, Ga., motor carrier; General Ins. Co. of America D 4/4/73	Dec. 1, 1971	Dec. 20, 1971	New Orleans, La.; \$25,000
P. Liedtka Trucking, Inc., 110 Paterson Ave., Trenton, N.J., motor carrier; St. Paul Fire & Marine Ins. Co. D 3/29/73	Mar. 7, 1972	Mar. 29, 1972	Philadelphia, Pa.; \$50,000
Northwest Transport Service, Inc., 5231 Monroe St., Denver, Colo., motor carrier; Mid-Century Ins. Co.	Oct. 12, 1972	Apr. 1, 1973	El Paso, Tex.; \$25,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Norwalk Truck Lines, Inc., dba Ringsby United, 5773 S. Prince, Littleton, Colo., motor carrier; General Ins. Co. of America. (PB 10/10/70) D 3/22/73 ⁸	June 30, 1972	Mar. 22, 1973	El Paso, Tex.; \$25,000
Ringsby Pacific Ltd., dba Ringsby United, 3201 Ringsby Ct., Denver, Colo., motor carrier; General Ins. Co. of America. (PB 9/1/70) D 8/28/72 ⁹	Aug. 14, 1972	Aug. 28, 1972	San Francisco, Calif.; \$25,000
Ringsby Truck Lines, Inc., dba Ringsby United, 3201 Ringsby Ct., Denver, Colo., motor carrier; General Ins. Co. of America. (PB 1/22/69) D 3/22/73 ¹⁰	June 30, 1972	Mar. 22, 1973	El Paso, Tex.; \$30,000
Ryder Truck Lines, P.O.B. 2408, Jacksonville, Fla., motor carrier; American Casualty Co. (PB 5/29/69) D 3/15/73 ¹¹	Mar. 15, 1973	Mar. 15, 1973	Tampa, Fla.; \$25,000
Skinner Transportation System Inc., 3020 E. Las Hermanas St., Compton, Calif., motor carrier; St. Paul Fire & Marine Ins. Co.	Jan. 17, 1973	Mar. 28, 1973	Los Angeles, Calif.; \$25,000
Transconex, Inc., 900 S.E. 11th St., Hialeah, Fla., motor carrier; St. Paul Fire & Marine Ins. Co.	Jan. 23, 1973	Mar. 27, 1973	Miami, Fla.; \$50,000
United Buckingham Freight Lines, Inc. dba Ringsby United, 5773 S. Prince, Littleton, Colo., motor carrier; General Ins. Co. of America (PB 12/8/70) D 3/22/73 ¹²	Dec. 8, 1972	Mar. 22, 1973	El Paso, Tex.; \$30,000

⁸ Surety is Security Ins. Co. of Hartford⁹ Surety is The Home Indemnity Co.¹⁰ Surety is American Casualty Co. of Reading, Pa.¹¹ Surety is The Home Indemnity Co.¹² Surety is Peerless Casualty Co.¹³ Surety is St. Paul Fire & Marine Ins. Co.¹⁴ Surety is The Aetna Casualty & Surety Co.¹⁵ Principal is Norwalk Truck Lines, Inc.¹⁶ Principal is Ringsby Pacific, Ltd.¹⁷ Principal is Ringsby Truck Lines, Inc.¹⁸ Surety is General Ins. Co. of America¹⁹ Principal is United Buckingham Freight Lines, Inc.

(241.2)

LEONARD LEHMAN,
Assistant Commissioner,
Office of Regulations and Rulings.

CUSTOMS

(T.D. 73-115)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (baht)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 16, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to section 16.4, Customs Regulations (19 CFR 16.4).

	<i>Official</i>	<i>Free</i>
March 12, 1973-----	\$0.2020	Not available
March 13, 1973-----	.2000	" "
March 14, 1973-----	.2000	" "
March 15, 1973-----	.2000	" "
March 16, 1973-----	.1950	" "
 Iran rial :		
April 2, 1973-----		\$0.0146
April 3, 1973-----		.0145
April 4, 1973-----		.0145
April 5, 1973-----		.0145
April 6, 1973-----		.0145
 Philippine peso :		
For the period April 2 through April 6, 1973, rate of \$0.1460.		
 Singapore dollar :		
April 2, 1973-----		\$0.4020
April 3, 1973-----		.4025
April 4, 1973-----		.4025
April 5, 1973-----		.4030
April 6, 1973-----		.4035

Thailand baht (tical) :

April 2, 1973-----	\$0.0483
April 3, 1973-----	.0482
April 4, 1973-----	.0484
April 5, 1973-----	.0485
April 6, 1973-----	.0485

(342.211)

R. N. MARRA,

Director,

Appraisement and Collections Division.

(T.D. 73-116)

Cotton, wool and manmade fiber textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products and wool and manmade fiber textile products manufactured or produced in Hong Kong

DEPARTMENT OF THE TREASURY,

OFFICE OF THE COMMISSIONER OF CUSTOMS,

Washington, D.C., April 24, 1973.

There is published below the directive of April 5, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the visa requirement for cotton textiles and cotton textile products and wool and manmade fiber textile products, manufactured or produced in Hong Kong. This directive cancels that Committee's directive of January 3, 1973 (T.D. 73-39).

This directive was published in the Federal Register on April 9, 1973 (38 F.R. 9046), by the Committee.

(343.3)

R. N. MARRA,

Director,

Appraisement and Collection Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 5, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive cancels the directive issued to you on January 3, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, which established a Visa requirement for cotton, wool, and man-made fiber textiles and textile products produced or manufactured in Hong Kong.

Under the provisions of the bilateral Cotton Textile Agreement of December 17, 1970, as amended, and the bilateral Wool and Man-Made Fiber Textile Agreement of January 6, 1972, between the Governments of the United States and Hong Kong, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed effective April 9, 1973, to permit entry without Visas of shipments of cotton textiles and cotton textile products in Categories 1-64; wool textile products in Categories 101-126, 128, and 131-132; and man-made fiber textile products in Categories 200-243 produced or manufactured in Hong Kong.

The actions taken with respect to the Government of Hong Kong and with respect to imports of cotton, wool, and man-made fiber textiles and textile products from Hong Kong, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
*Chairman, Committee for the Implementation
of Textile Agreements, and*
*Deputy Assistant Secretary for Resources
and Trade Assistance*

(T.D. 73-117)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tbaht)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 23, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(e), Tariff Act of 1930, as amended (31 U.S.C. 372(e)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to section 16.4, Customs Regulations (19 CFR 16.4).

	<i>Official</i>	<i>Free</i>
March 19, 1973	\$0. 1945	Not available
March 20, 1973	. 1960	" "
March 21, 1973	. 1965	" "
March 22, 1973	. 1975	" "
March 23, 1973	. 1980	" "
 Iran rial:		
April 9, 1973	-----	\$0. 0146
April 10, 1973	-----	. 0146
April 11, 1973	-----	. 0150
April 12, 1973	-----	. 0150
April 13, 1973	-----	. 0150
 Philippine peso:		
For the period April 9 through April 13, 1973, rate of		\$0.1460.
 Singapore dollar:		
April 9, 1973	-----	\$0. 4025
April 10, 1973	-----	. 4040
April 11, 1973	-----	. 4035
April 12, 1973	-----	. 4040
April 13, 1973	-----	. 4040

Thailand baht (tical):

April 9, 1973-----	\$0.0485
April 10, 1973-----	.0488
April 11, 1973-----	.0490
April 12, 1973-----	.0490
April 13, 1973-----	.0490
(342.211)	

R. N. MARRA,
Director,
Appraisement and Collections Division.

(T.D. 73-118)

Reimbursable services—Excess cost of preclearance operations

DEPARTMENT OF THE TREASURY,
 OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 25, 1973.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning April 29, 1973.

<i>Installation</i>	<i>Biweekly Excess Cost</i>
Montreal, Canada	\$4,680.00
Toronto, Canada	12,311.00
Kindley Field, Bermuda	1,303.00
Nassau, Bahama Islands	3,017.00
Vancouver, Canada	656.00
Winnipeg, Canada	501.00

(140.57)

EDWIN F. RAINS,
Acting Commissioner of Customs.

[Published in the Federal Register April 27, 1973 (37 F.R. 10473)]

Decisions of the United States Court of Customs and Patent Appeals

(—F. 2d—)

Automobiles—Petition for Rehearing Denied; opinion Modified by addition of footnote following penultimate sentence

THE UNITED STATES v. C. J. TOWER & SONS OF BUFFALO, INC.
No. 5439, C.A.D. 1079

United States Court of Customs and Patent Appeals, April 19, 1973

[Petition for Rehearing Denied ; opinion Modified by addition of footnote following penultimate sentence]

PER CURIAM.

Our opinion of December 29, 1972, is modified to the extent that a new footnote is added at the end of the penultimate sentence thereof. That sentence and the footnote now read as follows:

The appeal is remanded to the Customs Court for further proceedings consistent with this opinion.⁵

⁵ Naturally such proceedings should include correction of any arithmetical errors which may have occurred in its previous calculations.

Appellant's petition for rehearing is denied.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge
Nils A. Boe

Judges

Paul P. Rao	James L. Watson
Morgan Ford	Herbert N. Maletz
Scovel Richardson	Bernard Newman
Frederick Landis	Edward D. Re

Senior Judges

Charles D. Lawrence
David J. Wilson
Mary D. Alger
Samuel M. Rosenstein

Clerk
Joseph E. Lombardi

Protest Decision

(C.D. 4416)

RACHELLE LABORATORIES, INC. v. UNITED STATES

Chemicals

AMERICAN SELLING PRICE—ALTERNATIVE BASES—MOTION TO DISMISS—
FAILURE OF PROOF

Where an importer attacks an American selling price appraisement of an imported chloramphenicol intermediate known as "levo base" by introducing evidence negating sales or offers for domestic consumption of the only competitive product manufactured in the United States, but does not present evidence that the manufacturer,

producer, or owner of such competitive product would not have sold or was not willing to sell such product for domestic consumption during the relevant times, the Government's motion to dismiss for failure of proof, made at the conclusion of the importer's case, will be granted. The principle in *Hudson Shipping Co., Inc. v. United States*, 43 CCPA 19, C.A.D. 604 (1955), followed.

Court Nos. R70/2654, R70/2655, R69/12130, and R69/12131 against the decision of the district director of customs at the port of Los Angeles

[Motion to dismiss granted.]

(Decided April 10, 1973)

Glad, Tuttle & White (*Edward N. Glad* of Counsel) for the plaintiff.
Harlington Wood, Jr., Assistant Attorney General (*Joseph I. Lieberman*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise of these consolidated actions consists of a chemical described as Chloramphenicol Intermediate D-threo-1-p-nitrophenyl-2-amino-propnediol-(1.3), which is commonly referred to as "levo base", and said to be the 12th intermediate in the manufacture of chloramphenicol. The levo base at bar was exported from West Germany between July and September of 1968, entered at the port of Los Angeles, California, and advanced in value under appraisement based on American selling price as defined in 19 U.S.C.A., section 1401a(e) (section 402(e), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956) to \$150.00 per kilo, net packed.

It is alleged in the complaint that there is no American selling price or United States value for the imported levo base, and that export value as defined in 19 U.S.C.A., section 1401a(b) (section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956) is the proper basis for determining the value of said merchandise, and that the export value of the levo base is \$25.00 per kilo, net packed. And in the pleadings the parties admit that no domestic article like or similar to the levo base at bar was being freely sold or, in the absence of sales, offered for sale for domestic consumption at the time of exportation of the imported merchandise before the court.

At the trial the parties stipulated that the only use for the involved merchandise is in the manufacture of chloramphenicol where it is used as an intermediate, that during the period between June and August, 1968, plaintiff was the only importer of the involved levo base, and that during the period in question Parke Davis & Company of Detroit, Michigan, manufactured and produced* merchandise similar to the levo base at bar.

*An alternative concession that Parke Davis *sold* merchandise for domestic consumption similar to that at bar conflicts with the aforementioned pleading admission that no such sales were made, and as such, is disregarded here by the court.

On the American selling price issue George Valentekovich, director of fine chemical manufacture for plaintiff, testified that plaintiff could not produce sufficient levo base in the United States to meet its manufacturing needs in the production of chloramphenicol, and consequently, looked to Europe as a source of supply because there was no available levo base in the United States at that time. In this connection, the witness explained (R. 16) :

Q. Did you explore the possibility of purchasing the levo base in the United States?—A. Yes; we did. I say, again, Dr. Clark and I discussed this, and Dr. Clark approached Parke Davis, which was the sole producer of chloramphenicol at that time, and nothing came out of this. Dr. Clark asked them for selling of chloramphenicol.

Q. What period of time was this?—A. As I recall, this was beginning of '68, I think.

Also, on the American selling price issue Gerald A. Koris, vice-president and general counsel of International Rectifiers, plaintiff's parent firm, identified correspondence which he exchanged with Parke Davis in August of 1970, in which he asked Parke Davis, among other things, if Parke Davis sold or offered to sell levo base in the United States in 1968 and 1969, and received a reply from Parke Davis to the effect that Parke Davis has not sold or offered to sell levo base in the United States and elsewhere.

The foregoing constitutes all the relevant evidence offered by plaintiff on its case in chief relative to the negation of American selling price as a basis for appraisement of the imported levo base. Other evidence introduced by plaintiff at this point bore either on the negation of United States value or on export value.

At the conclusion of plaintiff's case in chief, the defendant moved to dismiss the actions on the ground that plaintiff failed to establish a *prima facie* case on the facts and the law. In support of this motion defendant's counsel argued, among other things (R.58-59) :

It is perfectly clear in my mind, your Honor, that plaintiff has not adduced any significant evidence whatsoever dealing with the period of exportation of the merchandise in this case, July through September of 1968, which would have shown that Parke Davis, had a proper offer come along, would not have been willing to sell or would have received orders for its chloramphenicol intermediate. The burden of proof is entirely on the plaintiff, and there is not a scintilla of evidence in this case to that effect. All we have had testified to this morning, your Honor, has been various vague references to sales of the finished product and sales or offers made in the subsequent year of 1970. Market conditions in 1968 are what we are concerned with.

Section 1401a(e) provides:

For the purposes of this section, the American selling price of any article produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the article in condition packed ready for delivery, at which such article is freely sold or, in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such article when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

With respect to the alternative bases for determining American selling price as set forth in section 1401a(e), the majority of our appeals court had this to say in *Hudson Shipping Co., Inc. v. United States*, 43 CCPA 19, 28, C.A.D. 604 (1955) :

If American selling price may be established by alternative findings, then, in this case, appellant has not made out a *prima facie* case unless he offers evidence tending to negative the existence of each alternative. The presumption is that the appraiser has found facts that would support an American selling price valuation. If importer should prove that there was no freely offered price, the inference is not that the appraiser acted incorrectly, but that he found that there was a price the American owner would have received or was willing to receive. Not until importer presents evidence on this point also does he establish a *prima facie* case.

And this principle was most recently explained and reaffirmed by our appeals court in *A. Zerkowitz & Co., Inc. v. United States*, 58 CCPA 60, C.A.D. 1005, 435 F.2d 516 (1970), *reh. den.*, 58 CCPA 72, 438 F.2d 1240 (1971), *cert. den.*, 404 U.S. 831 (1971).

In the instant case, although the court agrees with plaintiff that the facts show that Parke Davis was the only other domestic manufacturer, producer, or owner of levo base during the relevant period, and that Parke Davis did not offer its levo base for sale during 1968, nevertheless, plaintiff has not, consistent with the principle enunciated in C.A.D. 604 and reaffirmed in C.A.D. 1005, presented any evidence in the instant case tending to establish that Parke Davis would not have sold or was not willing to sell its levo base during the period in question. The evidence presented by plaintiff goes no further than to negate sales and offers of levo base during the relevant period on Parke Davis' part, and never does get into the matter of Parke Davis' willingness to sell or whether Parke Davis would have sold its levo

base. Consequently, the presumption which derives from the appraisement herein to the effect that Parke Davis would have sold its levo base or was willing to sell its levo base for domestic consumption for \$150.00 per kilo, net packed, between July and September, 1968, remains wholly unrebutted. As such, the court need not make findings relative to United States and export value claims advanced by plaintiff. See *Aldrich Chemical Company, Inc. v. United States*, 63 Cust. Ct. 549, R.D. 11674 (1969). The court fully agrees with defendant that plaintiff has not made out a *prima facie* case. Defendant's motion to dismiss is granted, and the consolidated actions herein are dismissed for failure of proof.

Judgment will be entered herein accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, April 16, 1973.
The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	PORT OF ENTRY AND MERCHANDISE	
						Par. or Item No. and Rate	Par. or Item No. and Rate
P73360	Rao, J. April 9, 1973	Avalaham & Straus (Div. of Federated Dept. Stores, Inc.)	68/487, etc.	Item 681.75 Various ad valorem equivalent rates as set forth in column of said schedule headed "A," attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate".	Item 681.75 At compound rates as set forth in column of said schedule headed "Claimed Rate," the specific portion of the compound rate being applied once against each utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P73400	Rao, J. April 9, 1973	Associated Dry Goods Corp. et al.	67/8042, etc.	Item 681.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad	Item 681.75 Highest specific or compound rate for any article in set and from which the ad valorem equivalent rate was computed; the specific rate or specific	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets

CUSTOMS COURT

17

F73/401	Ford, J. April 9, 1973	Facit-Odhner, Inc.	Item 676.23 12.8% etc.	U.S. v. Air-Sea Forwarders et al. (C.A.D. 907)	San Francisco Calculating machines spe- cially constructed for multiplying and dividing
F73/402	Laudis, J. April 9, 1973	Keer, Manner Company	Item 186.30 1¢ per lb. etc.	Item 186.35 Free of duty etc.	American Bristle & Hair Drawing Co. et al. v. U.S. (C.A.D. 1048)
F73/403	Watson, J. April 9, 1973	Oxford International Corp.	Item 732.38 30% etc.	Item 612.20 13% or 17% etc.	Oxford International Corp. v. U.S. (C.D. 4236)
F73/404	Re, J. April 9, 1973	Davar Products, Inc., et al.	Item 681.4073, etc.	Item 772.06 21¢ per lb. and 17% etc.	Davar Products, Inc. v. U.S. (C.D. 3880)
F73/405	Re, J. April 9, 1973	Fleming Joffe, Ltd.	Item 681.8620, etc.	Par. 1530(c) 14% etc.	Agreed statement of facts
					New York Leather used in the manu- facture of boots, shoes, or other footwear

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
P73406	Re J. April 9, 1973	C. H. Powell Company	68/2785, etc.	Item 727.80 20%	Item 727.06 8.5%	Willem B. Haan et al. v. U.S. (C.D. 4280)	New York Automobile headrests used for the comfort and safety of automobile passengers Flatware sets
P73407	Rao, J. April 10, 1973	Aimco Wholesale Corp.	66/26746, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in column on said schedule headed "Claimed Rate", the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate", the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P73408	Rao, J. April 10, 1973	Metasco, Inc.	66/40930, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in column on said schedule	Item 651.75 At appropriate rates set forth in column on said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets

<p>Rao, J. April 10, 1973</p> <p>P73/400</p> <p>Metasco, Inc. 63/50248, etc.</p>	<p>schedule A, attached to decision and judgment, in column headed "As- sessed Ad Valorem Equivalent Rate"</p> <p>Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"</p>	<p>headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set</p> <p>Item #51.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the com- pound rate being applied once against each tool, knife, fork, spoon or other utensil in the set</p> <p>Import Associates of Amer- ica et al. v. U.S. (C.A.D. 961)</p> <p>New York Flatware 904s</p>
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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	PORT OF ENTRY AND MERCHANDISE	
						PAR. OR ITEM NO. AND RATE	PAR. OR ITEM NO. AND RATE
P73410	Rao, J. April 10, 1973	Metasco, Inc.	67/65206, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of Amer- ica et al. v. U.S. (C.A.D. 951)	New York Flatware sets
P73411	Rao, J. April 10, 1973	National Silver Company et al.	67/70607, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of Amer- ica et al. v. U.S. (C.A.D. 961)	New York Flatware sets

P73/101 Rao, J. April 10, 1973	S. Stern & Co. 64/2138, etc.	column headed "Assessed Ad Valorem Equivalent Rate". Par. 101(c) Various rates, depending on average yarn numbers	or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 400)	Agreed statement of facts	New York Rubberized pants and car coats, designed for rain- wear or similar uses, of man-made fabric, lam- inated with rubber	Par. 907 11%	Par. 907 21.5%	Item 376.96 Item 382.51 25% per lb. and 27.5%	Par. 907 11%	Par. 907 11%	Item 371.85 Item 382.04 42.5%	Par. 907 11%	Par. 907 11%	Item 376.96 Item 382.04 42.5%	Par. 907 11%	Par. 907 11%	Item 376.96 Item 382.04 42.5%
P73/412 Rao, J. April 10, 1973	V.I.P. Imports, Ltd. 71-12 01965																		
P73/413 Rao, J. April 10, 1973	Wales Fabrics Corp., et al. 63/3932, etc.																		
P73/114 Rao, J. April 10, 1973	F. B. Vandegrift & Co., Ltd., et al.	67/7884, etc.																	
P73/415 Laudis, J. April 10, 1973																			

Philadelphia
Figurines of pet animals
which change color to
show good or bad
weather

F. W. Woolworth Company
v. U.S. (C.D. 4945)

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
							amino
P73/416	Watson, J. April 10, 1973	Natione, Inc.	68/41789	Item 406.50 40% plus 3 1/4¢ per lb.	Item 406.50 40%	Agreed statement of facts	New York Methylalpha altruquinone
P73/417	Watson, J. April 10, 1973	Precise Imports Corp.	68/37143	Item 730.80 42%	Item 730.81 9%	Agreed statement of facts	New York Pistols and revolvers not designed to fire only blank cartridges or blank ammunition
P73/418	Maletz, J. April 10, 1973	Heads & Threads, Inc.	67/70921, etc.	Par. 307 22 1/4%, 20% or 19%	Par. 300 3 1/4% per lb.	Heads and Threads, Division of MSL Industries, Inc. v. U.S. (C.D. 3374) Heads & Threads, Inc. v. U.S. (C.D. 3366)	Baltimore Bolts with or without threads or nuts
P73/419	Newman, J. April 10, 1973	B. Altman & Co.	68/17990, etc.	Par. 412 16 2/3% (items marked "A") Par. 397 19% (items marked "B")	Par. 1555 4% (items marked "A" and "B")	D. M. Studner v. U.S. (C.D. 2401)	New York Paint block, print rollers, and paper rollers (items marked "A" and "B")
P73/420	Newman, J. April 10, 1973	Fedtro, Inc.	67/38836	Item 657.20 19%	Item 651.47 17%	Hollywood Accessories, Di- vision of Allen Electronics & Equip. Co. v. U.S. (C.D. 3391).	New York Oil can spouts

P73/121	Newman, J. April 10, 1973	Hudson Shipping Co., Inc., et al.	65/8029, etc.	Par. 1531 or 1531/1530(a) 20% (Items marked "A" and "B") Par. 353 15% (Items marked "C")	Par. 353 12 1/2% (Items marked "A" and "B") 13 1/4% or 12 3/4% (Items marked "C")	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (Items marked "A" and "B") Agreed statement of facts (Items marked "C")	New York Leather and vinyl or plastic cases imported with radios (entireties) (Items marked "A" and "B") Earphones not dedicated to use with the radios with which imported (electri- cal articles) (Items marked "C")
P73/122	Re. J. April 10, 1973	Davar Products, Inc., et al.	67/2351, etc.	Item 772.05 21¢ per lb. and 17%; 18.9¢ per lb. 15%	Item 772.15 17% and 15%	Davar Product, Inc. v. U.S. (C.D. 3880)	New York Plastic lidbit trays, stack sets and bowls
173/423	Re. J. April 10, 1973	Sterling Mfg. Co., Inc.	70/1610, etc.	Item 772.06 21¢ per lb. and 17%; 18.9¢ per lb. 15%	Item 772.15 17% and 15%	Davar Products, Inc. v. U.S. (C.D. 3880)	New York Plastic lidbit trays, stack sets and bowls, etc.
P73/124	Re. J. April 10, 1973	Under Sea Industries, Inc.	70/23935, etc.	Item 765.86 35%	Item 745.06 12%	Sports Industries, Inc. v. U.S. (C.D. 4125)	Los Angeles Gloves of rubber specially designed for and chiefly used in sports

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/124	Richardson, J. April 9, 1973 <small>1973</small>	Estee Candy Co., Inc.	R60/5216, etc.	Export value: Invoiced c.i.f. prices, less pro rated sea freight and marine insurance charges	Not stated	Estee Candy Co., Inc. v. U.S. (R.D. 11719)	New York Dietetic baked goods
R73/125	Re, J. April 10, 1973 <small>1973</small>	Mitsubishi Interna- tional Corp.	R62/7922, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for the respective pattern numbers and sizes listed therein, on the dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear

**Decision on Motion for Rehearing
Protest**

APRIL 10, 1973

Warshawsky & Company *v.* United States, protest 70/45933.—Fog LIGHTS—DRIVING LIGHTS.—C.D. 4410. Motion of Government for rehearing denied.

**Judgments of the United States Customs Court
in Appealed Cases**

APRIL 11, 1973

APPEAL 5463.—National Carloading Corp. *v.* United States.—MICA CONDENSER SECTIONS, REAPPRAISEMENT OF.—A.R.D. 280 affirmed December 29, 1972. C.A.D. 1080.

APPEAL 5524.—United States *v.* Pistorino & Company, Inc.—METAL STAMPINGS USED TO MANUFACTURE LATCH NEEDLES—LATCH NEEDLES, UNFINISHED—ANGLES, SHAPES AND SECTIONS—TSUS.—C.D. 4373. Appeal dismissed March 27, 1973.

APRIL 12, 1973

APPEAL 5408.—United States *v.* Jovita Perez.—RAILROAD BOXCARS—AMERICAN GOODS RETURNED.—C.D. 3969 reversed August 17, 1972. C.A.D. 1065.

APPEAL 5465.—Styson Art Products Co. *v.* United States.—PLASTIC FOOD PICKS AND PLASTIC SHOWER CURTAIN HOOKS—ARTIFICIAL FLOWERS—ARTICLES OF WOOD—HOUSEHOLD UTENSILS OF STEEL—SIMILITUDE—TRADE AGREEMENTS.—C.D. 4118 affirmed January 4, 1973. C.A.D. 1083.

ERRATUM

In Vol. 7, No. 16, weekly Customs Bulletin, April 18, 1973, page 17 (C.D. 4414) at bottom of page in column headed "ITEM" change 358182 to 3S8182 and 35336 to 3S336.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, April 26, 1973.

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[TEA-W-188]

TMA Co., WHEELING, ILLINOIS

*Workers' petition for determination;
notice of amendment of scope of investigation*

On March 14, 1973, the U.S. Tariff Commission published notice (38 F.R. 6935) of the institution of an investigation under section 301(c) (2) of the Trade Expansion Act of 1962 on behalf of the former workers of the TMA Co., Wheeling, Ill., to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with television receivers and radio-television-phonograph combinations (of the types provided for in items 685.20 and 685.42 of the Tariff Schedules of the United States) produced by said firm are being imported in the United States in such increased quantities as to cause, or threaten to cause, the unemployment or under-employment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

On April 12, 1973, the Commission amended the scope of this investigation, pursuant to its authority under section 403(a) of the said Act, to include articles like or directly competitive with radio-phonograph combinations (of the types provided for in item 685.30 of the Tariff Schedules of the United States) produced by said firm.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 18, 1973.

[TEA-F-52]

PETITION OF REGINA FOOTWEAR, INC., FOR A DETERMINATION UNDER SECTION
301(c) (1) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation and hearing

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962 on behalf of Regina Footwear, Inc., Brooklyn, New York, the United States Tariff Commission, on April 17, 1973, instituted an investigation under section 301(c)(1) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.20, 700.43, 700.45, and 700.55 of the Tariff Schedules of the United States) produced by the aforementioned firm, are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm.

A public hearing in connection with this investigation will be held beginning at 10 a.m., EDT on Tuesday, May 15, 1973, in the Hearing Room, U.S. Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. Requests for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, at his office in Washington, D.C., not later than noon, Thursday, May 10, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 18, 1973.

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- 5463—Mica condenser sections, reappraisal of, A.R.D. 280
- 5465—Plastic food picks and plastic shower curtain hooks; artificial flowers;
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Reappraisal decision:**Issue:**

American selling price—alternative bases—motion to dismiss—failure of proof—Where an importer attacked an American selling price appraisement of an imported chloramphenicol intermediate known as "levo base" by introducing evidence negating sales or offers for domestic consumption of the only competitive product manufactured in the United States, but did not present evidence that the manufacturer, producer, or owner of such competitive product would not have sold or was not willing to sell such product for domestic consumption during the relevant times, the Government's motion to dismiss for failure of proof, made at the conclusion of the importer's case, was granted. C.D. 4416

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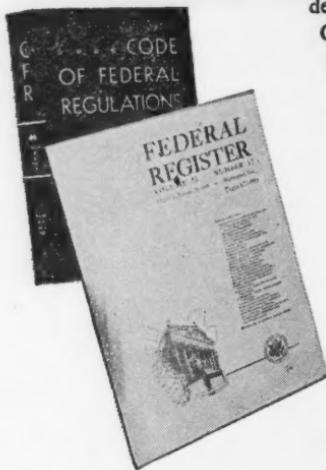
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